

THE EFFECTIVE DATE OF THIS ORDINANCE IS JANUARY 16, 2007

ORDINANCE # 07-02-442

AN ORDINANCE BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND TO REPEAL ORDINANCE #05-19-380 AND TO AMEND AND REVISE §§1-8-72, 77 & 78 OF THE FREDERICK COUNTY CODE, 2004

§1 Definitions. – In this Ordinance, the following terms shall have the meanings indicated:

“BOCC” shall mean the Board of County Commissioners of Frederick County, Maryland.

“Building Excise Tax” shall mean the County’s Building Excise Tax, authorized by PLL §2-7-131 and enacted by §§1-8-71 through 78 of the Code.

“Code” shall mean the Frederick County Code, 2004

“Municipal fee or assessment” shall have the meaning set forth in §1-8-72 of the Code.

“PLL” shall mean the Code of Public Local Laws of Frederick County.

§2 Background. – Pursuant to PLL §2-7-131, the BOCC is authorized to fix, impose and collect a building excise tax. By Ordinance #01-22-296, codified as §§1-8-71 through 81 of the Code, the BOCC imposed such a building excise tax

PLL §2-7-131(B)(2) provides that the BOCC may not impose or collect a building excise tax on construction within a municipality if the municipality imposes a similar “tax on construction specifically devoted and limited by law to use for capital projects for additional or expanded public road facilities.” The exemption required by PLL §2-7-131(B)(2) for municipal taxes similar to the building excise tax is codified at §1-8-78(B) of the Code.

On July 19, 2005 the BOCC adopted Ordinance #05-19-380, which amended and revised the Building Excise Tax to provide a credit for municipal fees or assessments that did not qualify as a "municipal tax on construction specifically devoted and limited by law to use for capital projects for additional or expanded public road facilities." Ordinance #05-19-380 was also applied retroactively for buildings with permits issued on or after July 1, 2004.

Ordinance #05-19-380 did not provide a similar exemption from the Building Excise Tax for "fees and assessments" paid to the County government. The BOCC can discern no policy justification to allow those who pay municipal fees or assessment to receive a credit against the Building Excise Tax while not allowing a credit for those who pay equivalent County fees or assessments.

The BOCC deems it prudent to repeal Ordinance #05-19-380 and to remove the codified provisions of Ordinance #05-19-380 from the Code.

The State law authorizing this Building Excise Tax, PLL, § 2-7-131, was modified during the 2006 General Assembly Session. House Bill 561 changed § 2-7-131(D)(4) so that the required match on State highway projects could be obtained from sources other than the State of Maryland. The Governor signed House Bill 561 (2006 Laws of Md. ch. 181).

The language of the County's existing Building Excise Tax Ordinance (§ 1-8-77(D)) mirrors the language of § 2-7-131(D)(4) before House Bill 561 was adopted. Changes should be made to § 1-8-77(D) to avoid a conflict between State and County law.

On January 16, 2007, the BOCC held a public hearing on this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND

§3. Repeal Of Ordinance #05-19-380 – Ordinance #05-19-380 is hereby
repealed.

§4 Amendment & Revision of §1-8-72 of the Code. – Section 1-8-72 of the Code
is revised and amended by deleting the definition of the term Municipal Fee or
Assessment

§1-8-72. DEFINITIONS.

...

~~[MUNICIPAL FEE OR ASSESSMENT Includes a fee, assessment or charge
imposed by law and paid to a municipality and devoted and limited by law to use for
capital projects for additional or expanded public road facilities. A municipal fee or
assessment does not include a fee, assessment or charge to be used to construct
internal roads, or to construct access related improvements such as acceleration or
deceleration lanes which traditionally are constructed by developers as a condition of
an entrance permit. Notwithstanding the foregoing, a municipal fee or assessment
shall include any fee, assessment or charge imposed and collected for the purpose of
constructing improvements to or reconstructing any road of collector status or higher,
or the municipality's equivalent of a county collector road.]~~

§5. Repeal of §1-8-78(D) of the Code. – Section 1-8-78(D) of the Code is
repealed and shall read as follows:

Text [within brackets] and ~~stricken through~~ indicates matter deleted from the existing ordinance.
CAPITALIZED and underlined text indicates matter added to the existing ordinance.

§1-8-78. MUNICIPALITIES.

(D) [~~Municipal fee or assessment~~

~~(1) A credit against the building excise tax due under this article shall be provided if:~~

~~(a) A municipal fee or assessment is required to be paid to a municipality as a condition of obtaining a building permit;~~

~~(b) The municipal fee or assessment is calculated on the square footage of the construction for which the building permit is sought, and~~

~~(c) The municipal fee or assessment is specifically devoted and limited by law to use for capital projects for additional or expanded public road facilities.~~

~~(2) (a) The amount of this credit shall be the amount of the municipal fee or assessment paid to the municipality.~~

~~(b) If the amount of the municipal fee or assessment paid to the municipality is less than the amount of the building excise tax calculated under this article, then the applicant for the building permit shall pay the amount of this difference to the county as building excise tax.~~

~~(c) If the amount of the municipal fee or assessment paid to the municipality is greater than or equal to the amount of the building excise tax calculated under this article, then no building excise tax shall be required.~~

~~(3) For purposes of this section only, a municipal fee or assessment shall be deemed to be "specifically devoted and limited by law to use for capital projects for additional or expanded road facilities" if the municipality requires by resolution,~~

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~~ordinance, statute or contract that the municipal fee or assessment is to be used for the purpose of contributing to or helping the municipality defray the cost of improvements to public road facilities, including fees imposed or paid under an agreement in satisfaction of the property owner's obligations with regard to such matters as special assessment fees, impact fees and adequate public facilities requirements.]~~

RESERVED.

§6. Revision of §1-8-77(D) of the Code. – Section 1-8-77(D) of the Code is revised to read as follows:

§ 1-8-77. DEVELOPMENT ROAD IMPROVEMENT FUND.

(A) *Establishment of fund.* The Director of Finance shall establish an account to be known as the Development Road Improvement Fund. All receipts from building excise taxes shall be deposited in the Development Road Improvement Fund. Interest earned by money in the Development Road Improvement Fund shall accrue to the Development Road Improvement Fund.

(B) *Use of Development Road Improvement Fund.* Funds from the Development Road Improvement Fund shall be expended only to pay for capital projects or indebtedness incurred for capital projects for additional or expanded public road facilities

(C) *County match.* Before the County Commissioners may expend funds from the Development Road Improvement Fund, the County Commissioners must match

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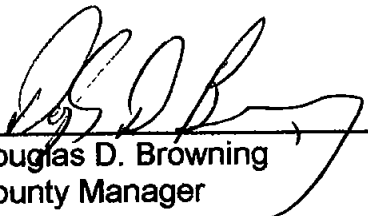
at least the same amount of funds for capital projects for additional or expanded public road facilities.

(D) *State highway match.* Before the County Commissioners may expend funds from the Development Road Improvement Fund for a road project on a state highway, [~~the state must match~~] at least the same amount of funds MUST BE OBTAINED FROM OTHER SOURCES for a capital project for additional or expanded public road facilities on the same road project on the state highway that is within Frederick County.

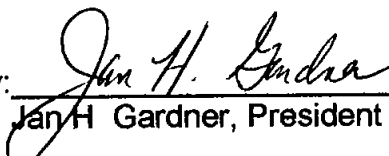
The undersigned hereby certifies that the Board of County Commissioners of Frederick County, Maryland approved and adopted the foregoing Ordinance on the 16th day of January, 2007.


ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND



Douglas D. Browning
County Manager

By: 

Jan H Gardner, President 

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